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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re JOSEPH S. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. REBECCA S. et al., Defendants and Appellants.	C046968 (Super. Ct. Nos. JD217745, JD217746, JD217747, JD219233)

Rebecca S. and James S., parents of the minors, appeal from orders of the juvenile court terminating their parental rights. (Welf. & Inst. Code, §§ 366.26, 395 [undesignated statutory references are to this code].) Appellants contend the notice requirements of the Indian Child Welfare Act of 1978 (ICWA), pursuant to title 25 United States Code section 1901 et seq., were not fulfilled. Appellants further contend that there was evidence establishing both the benefit exception (§ 366.26, subd. (c)(1)(A)) and the sibling exception (§ 366.26, subd.

(c)(1)(E)) to termination of parental rights and therefore the termination would be detrimental to the minors. We disagree and shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2002, the minors Joseph (two months), Matthew (20 months), James (three years) and Tabitha (their seven-year-old half sibling) were removed from parental custody due to severe neglect and ongoing parental substance abuse. Tabitha is not the subject of this appeal. The juvenile court ordered reunification services for the parents.

Near the close of the reunification period in April 2003, the mother gave birth to a fifth child, Tristan, who was detained at birth. Following a lengthy hearing conducted over numerous days in September and October of 2003, the juvenile court terminated reunification services as to the three older boys and denied services as to Tristan, setting a section 366.26 hearing as to all four minors.

The assessment for the section 366.26 hearing stated that the four minors were placed together with caretakers who were eager to adopt them. According to the results of a bonding assessment, none of the minors would suffer significant detriment if parental rights were terminated, despite the fact that Matthew and James did display some emotional attachment to appellants. Tabitha also was included in the bonding assessment, but displayed little interest in the minors and did not interact significantly with them. The bonding assessment

concluded there would be no detriment to the minors in being permanently separated from Tabitha by adoption.

At the section 366.26 hearing, the mother testified each of the three older boys demonstrated affection toward appellants during visits and each either expressed a desire to return home or was upset when the visits had to end. The mother further testified that the two older minors were depressed if Tabitha was not at visits and asked about her. The mother also testified that Tabitha was upset when her visits did not include the minors; was very bonded to the minors; interacted with them during visits; and used to insist on helping provide daily care for them when the family lived together. The juvenile court, specifically relying upon the bonding assessment, found that termination of parental rights would not be detrimental to the minors. The court selected adoption as the permanent plan for the four minors, terminating parental rights.

Additional facts relating to the ICWA issue appear as needed in the following discussion.

DISCUSSION

I

Appellants contend that notice to the relevant tribes under the ICWA was fatally defective in several respects.

At the detention hearing in January 2002, the juvenile court ordered the Sacramento County Department of Health and Human Services (DHHS) to investigate the minors' Indian heritage

and, if required, provide notice to the relevant tribes.[1] Accordingly, DHHS did inquire and notified the Cherokee and Sioux tribes of the pending dependency proceedings. Several tribes responded that the minors were not eligible for enrollment.

In April 2003, while investigating Tristan's Indian heritage, DHHS discovered new tribal heritage information and re-noticed the Cherokee and Sioux tribes as well as the Blackfeet and Navajo tribes for all the minors. DHHS filed copies of the notices and the return receipts with the juvenile court. Again, many of the tribes responded that the minors were not eligible for enrollment. The six tribes that did not respond were re-noticed in December 2003 as to Tristan. Two of those tribes responded that Tristan was not eligible for enrollment.

In March 2004, at the contested section 366.26 hearing, the court found there was insufficient evidence before the court to determine whether the minors were Indian children within the meaning of the ICWA. However, based on additional new information of ancestors' enrollment numbers, the court ordered DHHS to re-notice only the Cherokee tribes, providing the enrollment numbers as additional identification. Both parents informed the court that they had applied for membership in the Cherokee Nation and their enrollment was pending.

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[1] The initial notices did not include Tristan, who was born more than a year later, in April 2003.

DHHS sent new notices (form SOC 319) and requests for confirmation of Indian status (form SOC 318) to each of the three Cherokee tribes. The forms contained identical genealogical information, where known, for four generations including names, the relevant places of birth, birth and death dates, and tribal affiliations. All of the known enrollment, identification or card numbers were included, albeit not necessarily correctly associated with the relevant individual, and one of the two tribal enrollment numbers for the maternal great-grandfather was incorrect although the second was accurate. A copy of the petition was attached and the SOC 318 forms noted that the minors' birth certificates were available upon request. The SOC 319 form provided information on the proceedings, including the date of the next hearing and the name of an individual to contact for more information. The United Keetoowah Band of Cherokee Indians in Oklahoma responded that the minors were not eligible for enrollment in that tribe.

At the continued hearing in April 2004, the deputy county counsel who appeared was unfamiliar with the case and suggested re-noticing the Cherokee tribes was required. The court continued the matter to mid-May 2004 and ordered that new notices be sent.

The new notices which were sent as to Joseph, Matthew and James were flawed in several respects. The SOC 318 forms lacked much information that was included in the forms previously sent and incorrectly stated, "This is all the information available

to date." The tribal identification numbers which were included were associated with the wrong people and there were errors in the spelling of names. The SOC 318 form sent for Tristan, however, was identical to the one sent in March.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and DHHS have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (Cal. Rules of Court, rule 1439(d).) If, after the petition is filed, the court "knows or has reason to know that an Indian child is involved," notice of the pending proceeding and the right to intervene must be sent to the tribe or the Bureau of Indian Affairs if the tribal affiliation is not known. (25 U.S.C. § 1912(a); Cal. Rules of Court, rule 1439(f).) Failure to comply with the notice provisions and determine whether the ICWA applies is prejudicial error. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 472; *In re Kahlen W.* (1991) 233 Cal.App.3d. 1414, 1424.)

Federal regulations and the federal guidelines on Indian child custody proceedings both specify the contents of the notice to be sent to the tribe in order to inform the tribe of the proceedings and assist the tribe in determining if the child is a member or eligible for membership. (25 C.F.R. § 23.11(a),

(d), (e); 44 Fed.Reg. 67588 (Nov. 26, 1979).) If known, the agency should provide the name and date of birth of the child; the tribe in which membership is claimed; the names, birthdates, and places of birth and death, current addresses and tribal enrollment numbers of the parents, grandparents and great-grandparents, as this information will assist the tribe in making its determination of whether the child is eligible for membership and whether to intervene. (25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (Nov. 26, 1979); *In re D. T.* (2003) 113 Cal.App.4th 1449, 1454-1455.) Further, the notice should contain, inter alia, a statement of the right to intervene, the right to counsel, the right to a continuance and the addresses of the court and the parties and should have a copy of the petition attached to inform the tribe of the nature of the pending proceedings. (25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (Nov. 26, 1979).)

During the course of the dependency, notice of the proceedings was sent to all tribes that had any possible relationship to the minors. Appellants do not suggest that any tribes were missed, but contend that the contents of the notices sent in April 2004 were defective in several respects, i.e., missing names; incorrect tribal numbers; failure to notify the tribes that appellants' applications for tribal membership were pending; and failure to provide birth certificates for the minors.

It is apparent that the final notices sent as to the three older minors were woefully inadequate since much of the genealogical information that was known to DHHS was not included on their SOC 318 forms. However, these were not the only notices, or indeed even the first notices sent to the tribes. The failure to provide accurate, specific and known information about ancestors is a violation of federal statute (25 U.S.C. § 1901 et seq.; see § 360.6, subd. (b)); accordingly, reversal is not required unless prejudice is shown. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1419.)

In the context of this case, we discern no prejudice from the flawed notices of April 2004. A month before, the tribes were provided notice with extremely detailed information on several generations of the minors' ancestors. There was, even in that notice, an error in one of the tribal identification numbers, but that individual had a second enrollment number, which was correct, as well as a "card" number that was apparently correct. Further, while the various numbers were not necessarily associated with the correct individual, the tribe, in researching the numbers would doubtless resolve the matter easily. Despite the mass of detailed information provided the Cherokee tribes, none of the tribes asked for clarification of any items and one tribe concluded that the minors were not eligible for membership in that tribe. Moreover, Tristan's April 2004 notice contained the same information as was sent in March and there is no indication any of the tribes considered

him, but not his brothers, eligible for membership based upon the more complete SOC 318. Any error in providing an erroneous enrollment number for one ancestor and failing to provide complete information for all the minors in April 2004 was harmless in light of the other information provided in both the March and April notices.

Similarly, we find no prejudice from the DHHS practice of noting on the SOC 318 form that a copy of the birth certificate was available upon request. The federal regulations do not require that a copy of the birth certificate accompany the notice to the tribe. Copies of the petition, which are required, were sent, according to the SOC 318. Making the tribes aware that the birth certificates were available, more than complied with the ICWA requirements.

Appellants argue DHHS failed to inform the tribes that appellants were applying for enrollment in the Cherokee Nation. Not only does DHHS have absolutely no duty to provide such information, the Cherokee Nation, the only relevant tribe, presumably was aware from its own records that appellants' applications for membership were pending.

Appellants assert that the various errors in completing the forms are evidence that DHHS did not fulfill its duty of inquiry. We disagree. The SOC 318 forms in this case contain far more information than is usually available and is evidence that adequate inquiry did occur. The minor errors in proofreading and transcription did not, in this case, affect the

adequacy of the notice or render the compliance with the ICWA notice ineffective.

II

Appellants contend termination of parental rights was detrimental to the minors, both because they had a beneficial relationship with appellants and because termination would interfere with the substantial relationship they had with their half sister. We disagree.

"'At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption*. [Citation.]' [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) There are only limited circumstances that permit the court to find a "compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1).) The party claiming the exception has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Cal. Rules of Court, rule 1463(d)(3); Evid. Code, § 500.)

One of the circumstances in which termination of parental rights would be detrimental to the minor is: "The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A).) The benefit to the child must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive emotional attachment between parent and child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

Here, the evidence was in conflict. The mother testified about the strength and quality of the parent-child bond and the emotional attachment the minors had to their parents. The DHHS proffered the bonding study, which the court accepted into evidence as part of the assessment prepared for the hearing.

The conclusions of the bonding study were clear that none of the four minors would suffer long-term detriment by severing the parent-child relationship and that the benefit of a stable, permanent home outweighed any benefit to the minors from an ongoing relationship with appellants. In finding termination of parental rights was not detrimental to the minors, the court resolved the conflict adversely to appellants. We may not disturb that resolution on appeal. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

A second circumstance under which termination of parental rights would be detrimental is when "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(E).)

The juvenile court must consider the interests of the adoptive child, not the sibling, in determining whether termination would be detrimental to the adoptive child. (*In re Celine R.* (2003) 31 Cal.4th 45, 49-50; *In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) "To show a substantial interference

with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

Once again, the evidence is in conflict and the juvenile court resolved the conflict adversely to appellants. According to the bonding study, there was little, if any, relationship between the minors and their half sister. Substantial evidence, including, but not limited to, the bonding study supported the juvenile court's conclusion that there was no detriment to the minors in terminating parental rights.

DISPOSITION

The orders of the juvenile court are affirmed.

BUTZ, J.

We concur:

BLEASE, Acting P. J.

DAVIS, J.